

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CLAUDE BOLING,

Plaintiff,

CIVIL NO: 07-11752

HONORABLE JOHN CORBETTO'MEARA  
HONORABLE STEVEN D. PEPE

vs.

CORRECTIONS MEDICAL SERVICE and  
TERRY A. ARNOLD

Defendants.

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**ORDER DENYING PLAINTIFF'S PETITION FOR A  
WRIT OF HABEAS CORPUS AD TESTIFICANDUM (Dkt. #17)**

On August 29, 2007, Plaintiff filed his motion for default judgment against Defendant Correctional Medical Services ("CMS") for failure to answer or otherwise plead or defend as provided by the Federal Rules of Civil Procedure (Dkt. #14). Plaintiff also filed an August 29, 2007, request for clerk's entry of default (Dkt. #12), which was denied on August 30, 2007, pursuant to 42 U.S.C. § 1997e(g) (Dkt. #13). While Michael D. Kennedy has entered an appearance on behalf of CMS in this matter, CMS has failed to return an executed waiver of service of summons or otherwise respond to Plaintiff's Complaint (Dkt. #10). As Plaintiff had already been informed by the Clerk's Office in response to his motion for entry of default judgment (Dkt. #13), default judgment for failure to answer in this case would be improper because 42 U.S.C. § 1997e provides defendants in actions brought by prisoners pursuant to §

1983 with the ability to waive the right to answer and indicates “such waiver shall not constitute an admission of the allegations contained in the complaint.” 42 U.S.C. § 1997e(g)(1).<sup>1</sup>

Accordingly, the Court denied Plaintiff’s motion for default on August 31, 2007 (Dkt. #16).

Plaintiff has now filed a petition for writ of habeas corpus ad testificandum in which he seeks that the Court require Warden Carol Howes, of Florence Correctional Facility, ACF and the Michigan Department of Corrections to bring Plaintiff before the Court for oral argument on his motion for default (Dkt. #17). All pre-trial matters were referred (Dkt. #2). Because Plaintiff’s motion for default has already been denied by order of this Court and there is no apparent reason to reconsider that denial, it is therefore **ORDERED** that Plaintiff’s petition for writ of habeas corpus ad testificandum is **DENIED**.

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b) and LR 72.1(d). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon the Magistrate Judge.

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<sup>1</sup> Under 42 U.S.C. § 1997e(g)(1):

Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

**SO ORDERED.**

Dated: September 12, 2007  
Ann Arbor, MI

s/ Steven D. Pepe  
United States Magistrate Judge

**CERTIFICATE OF SERVICE**

This is to certify that on September 12, 2007, I electronically filed the foregoing Scheduling Order with the Clerk of the Court using the ECF system which will send notification of such filing to the following parties: Christine M. Campbell, Michael D. Kennedy, and I hereby certify that I have mailed a copy of the Scheduling Order to the following non-ECF parties: Claude Boling #191936, Florence Crane Correctional Facility, 38 Fourth St., Coldwater, MI 49036

s/ James P. Peltier  
James P. Peltier  
Courtroom Deputy Clerk  
U.S. District Court  
600 Church St.  
Flint, MI 48502  
810-341-7850  
pete\_\_peltier@mied.uscourts.gov